

FARKAS & MANELLI PLLC
ATTORNEYS

#24

February 28, 2000

VIA HAND-DELIVERY

Ms. Esther Kepplinger
Director of Group 1700
United States Patent & Trademark Office
Washington, D.C. 20231

Re: Improper Withdrawal From Issuance of
U.S. Patent Application Ser. No. 09/009,294

Dear Ms. Kepplinger:

This letter is a follow-up to our telephone conversations of last week concerning recent actions taken by the U.S. Patent and Trademark Office, which, as indicated in the attached February 17, 2000 Notice from the Office of Petitions, has resulted in the withdrawal from issuance of Patent Application Ser. No. 09/009,294. This application was due to issue as U.S. Patent No. 6,030,601 on February 29, 2000.

As I understand it, these actions were based on U.S. Patent Office concerns that the technology developed by inventor Dr. Randell L. Mills and disclosed in the subject patent application, and perhaps in other allowed applications and a prior issued patent of Mills, represents "unproven science," such as "cold fusion." I am writing to allay those concerns and to assure you that they are unfounded inasmuch as this technology has been subject to extensive testing and proven beyond argument to work. The results of that testing have already been presented and positively considered by the U.S. Patent Office and embraced by highly reputable companies, not to mention the U.S. Navy and the American Chemical Society.

Before proceeding any further, let me just say that I appreciate the courtesy you extended in taking my calls inquiring into this matter and the circumstances surrounding this rather unusual turn of events. I gathered from your comments that you share my desire to resolve this matter as directly and expeditiously as possible, and it is my sincere hope that this letter, as the first step in that process, will convince you that there is no need for further examination of the '294 patent application and that it should be immediately allowed to issue.

As I stated during our conversations, this application, as well as the other allowed Mills applications assigned to my client, Blacklight Power Inc., represents a significant advance in the

chemical arts. The underlying technology disclosed in these applications is the culmination of over ten years of research and the expenditure of over ten million dollars invested by well-known companies, such as AMP Corporation, Connectiv, and PacificCorp, companies that would not dare risk their business reputations on "unproven science."

To be sure, Dr. Mills' technology has undergone rigorous testing by over 25 well-known independent laboratories and has been shown to be based on sound scientific principles and, more importantly, shown to work precisely as described in Mills' '294 patent application. Based on his startling discoveries, Dr. Mills was bestowed the honor of addressing the October 1999 meeting of the American Chemical Society (ACS) in California, during which he presented to an enthusiastic and receptive audience the test results for the very compounds disclosed and claimed in that application. Also a featured speaker at this meeting was Dr. Johannes Conrads, retired Director and Chairman of the Board of the Institute for Low Temperature Plasma Physics at Ernst Moritz Arndt University in Greifswald, Germany. Dr. Conrads, considered by many to be one of Germany's top physicists, tested the Mills technology himself and reported to the ACS that it produced an energetic plasma in hydrogen with no power input, conclusively demonstrating a new source of chemical energy from hydrogen never before seen. Dr. Conrads, and the four other top scientists who assisted in this testing, would not put their professional reputations in jeopardy for the sake of "unproven science."

These positive test results also have not escaped the attention of the U.S. Government. Following a thorough review, the United States Navy has taken affirmative steps to develop applications based on the Mills technology in cooperation with Blacklight Power.

In view of the allowance of this and other patent applications of Dr. Mills, the issuance of U.S. patent No. 6,024,935 to Dr. Mills, and other highly-desirable commercial applications of the Mills technology, Blacklight Power's management has committed to the process of going public and has limited its choice of underwriter to either Morgan Stanley or Goldman Sachs, two of Wall Street's top investment firms who also share an interest in carefully guarding their business reputations. Indeed, this process is now in the latter stages, with the filing statement for the IPO scheduled for late March. The market capitalization for this public offering is expected to exceed one billion dollars based on current market conditions. Blacklight Power's current private market capitalization is already in excess of 340 million dollars, based on the last private placement that was oversubscribed.

This enthusiastic public response to Blacklight Power and the revolutionary technology it developed did not just happen by chance. The company has been built upon a rock solid foundation of top-notch scientists and leaders in chemistry and physics. Included among the distinguished board members of Blacklight Power are: Dr. Shelby T. Brewer, M.S. and PhD. degrees from MIT in Nuclear Engineering, former Assistant Secretary of the Department of Energy and former Chief Executive Officer of Combustion Engineering's Nuclear Business; George A. Sawyer, former Assistant Secretary of the Department of Navy; David Blake presently with Connectiv and formerly a top manager with Du Pont and Hurcules Chemical Specialties.

Company; and Michael P. Kalleres, former President and CEO of Global Associates, Ltd., Technology Services Group, and retired Vice Admiral from the U.S. Navy, currently serving on the Defense Science Board, the Naval Studies Board of National Academy of Science, and the Dean's Advisory Council of Purdue University. Furthermore, many of the shareholders of Blacklight Power are Phd. chemists and physicists. Certainly, the U.S. Patent Office does not believe that this impressive list of Phd. chemists and physicists associated with Blacklight Power would waste their money and efforts on "unproven science."

No doubt, therefore, you can appreciate the significant negative impact the PTO's withdrawal of the '294 patent application from issuance has had not only on Blacklight Power, but on many other players in the industry, including the U.S. Government, who have a vested interest in seeing that the Mills technology is not just commercially developed, but also adequately protected against piracy. Thus, you can understand my utter dismay when you informed me that this application had been "pulled" based on some perceived "heat" (from an undisclosed source) without reviewing the file history. As with any revolutionary technology, such negative reactions should not be surprising and, indeed, should be expected. I would hope that the Patent Office would not act "willy-nilly" upon some unfounded conclusions drawn without adequate evidentiary basis.

I was also disturbed by Director Robert Spar's comment to me that he directed Petitions Examiner Frances Hicks to issue the petition to withdraw the subject patent application from issuance based on the premise that the underlying technology involved "cold fusion." With all due respect, that assertion is baseless and utter nonsense since the subject patent application is directed to chemical compositions of stable matter rather than a nuclear reaction process. The distinction between stable chemical compounds and a nuclear reaction process should be obvious to any competent chemist and such a determination was in fact made by the U.S. Patent Office.

One such competent chemist, Primary Examiner Steven Kalafut, evaluated over 130 published "cold fusion" articles during prosecution of the subject patent application, as evidenced by the extensive initialed Form PTO/SB/08A and B documents, and it was certainly clear to him that the subject application is not related to cold fusion. Examiner Kalafut was advised by the undersigned during a personal interview that these immaterial "cold fusion" publications were being submitted in the subject application only because they were previously cited by Examiner Harvey Behrend of Group 3641 in an earlier application by Dr. Mills. Steven Kalafut also withdrew a Section 101 rejection of the subject application based on inoperability after Dr. Mills personally submitted convincing experimental evidence by unbiased third party physicists and chemists that the subject patent application is operable.

Another competent chemist, Primary Examiner Wayne Langel, also examined the over 130 published "cold fusion" articles during prosecution of another patent application and allowed that application to issue as U.S. Patent No. 6,024,935. Examiner Langel was also advised by the undersigned during a personal interview that these immaterial "cold fusion" publications were

being submitted only because they were previously cited by Examiner Harvey Behrend of Group 3641 in an earlier application by Dr. Mills.

The '935 patent, prior to issuance, is believed to have been subject to another level of review and approved by the Office of Patent Quality Review. This belief is based on the fact that the application was sent back to Examiner Langel to correct a very minor mistake in claim 304, line 1 to replace "304" with - - 303 - - after the application was forwarded to the Patent Publication Branch. Furthermore, the patent issued more than ten months after payment of the issue fee, allowing more than sufficient time for U.S. Patent Office to review the '935 patent before issuance.

I must say that I was also somewhat taken aback by your statement that you had no evidence that the invention disclosed in the subject '294 application was inoperable. In spite of this lack of evidence, you also stated that you believed the invention was inoperable because you learned in a textbook that "atomic hydrogen" cannot go below the "ground state." We acknowledge that atomic hydrogen having the ground state of 13.6 eV can only exist in a vacuum or in isolation, and that atomic hydrogen cannot go below this ground state in isolation. However, please keep in mind that there is no known composition of matter containing hydrogen in the ground state of 13.6 eV. When hydrogen reacts with another element, it goes to a lower energy state. Dr. Mills has discovered new compositions of matter containing hydrogen at new lower energy levels, which lower energy levels are achieved using the novel catalysts disclosed in the subject patent application. Over forty new compounds have been produced using Dr. Mills technology which exhibit novel, commercially valuable properties. The existence of the new lower energy level hydrogen has been established by well known analytical chemistry methods including Nuclear Magnetic Resonance Spectroscopy, Time of Flight Secondary Ion Mass Spectroscopy, and X-Ray Photoelectron Spectroscopy conducted by unbiased third parties. Primary Examiners Kalafut and Langel have fully evaluated this extensive experimental data.

To distinguish the new lower energy level hydrogen from conventional energy level hydrogen, Dr. Mills has named the new lower energy level hydrogen "hydrinos." "Hydrino" is latin for smaller or tighter bound hydrogen. The subject patent application describes and claims novel chemical compositions of matter comprising hydrinos. Please be assured that absolutely no nuclear "cold fusion" reactions are occurring in the formation of the hydrinos.

The U.S. patent system worked precisely as intended in the issuance of U.S. Patent No. 6,024,935 and the Notice of Allowances in five U.S. patent applications of Dr. Mills, including the subject application. The issued '935 patent and the five allowed patent applications were objectively and fairly examined by experienced Primary Examiners Kalafut and Langel on all of the surrounding facts, including "cold fusion" accusations. When I inquired about the '935 patent and these other allowed applications, Director Spar also informed me that the '935 patent will most likely be Reexamined by the U.S. Patent Office and petitions for withdrawal from issuance will be filed in the other four allowed applications of Dr. Mills. To overturn the objective examination of these applications by two experienced, chemical Primary Examiners

Ms. Esther Kepplinger, Dir. 1700
February 28, 2000
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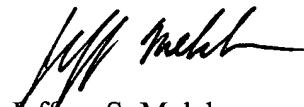
based on a whim and unsubstantiated "cold fusion" accusations by unnamed parties undermines the integrity of the U.S. Patent Office and, indeed, the entire U. S. patent system.

In an effort to better understand the underlying basis for the PTO's actions and to bring this matter to a swift conclusion, we respectfully request a meeting with you and whoever else you deem to be appropriate, to discuss this matter further before any Office Actions are issued in the subject '294 patent application or in any other presently allowed application, and before any Reexamination of the '935 patent that would drag this matter out before the public.

Since the U.S. Patent Office was unable to locate a copy of the prosecution history for the subject patent application as of February 25, 2000, more than one week after Ms. Hicks signed the petition, we have enclosed a courtesy copy of our prosecution file history for your review in this matter.

Thank you for your attention to this matter and we look forward to your prompt reply.

Sincerely yours,



Jeffrey S. Melcher
Reg. No. 35,950
Tel. No.: 202.261.1045

Attachments

Cc: The Honorable Todd Dickinson - Commissioner of Patents
Robert Spar - Director of Special Programs
Francis Hicks - Petitions Examiner
Stephen Kalafut - Primary Examiner Group 1700
Wayne Langel - Primary Examiner Group 1700

FARKAS & MANELLI PLLC
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#23

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VIA HAND-DELIVERY

Director Robert Spar
Director of Special Programs
United States Patent & Trademark Office
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U.S. Patent Application Ser. No. 09/009,294

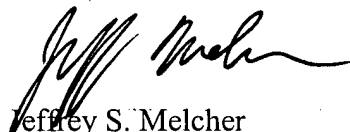
Dear Director Spar:

We respectfully request that you reverse the actions of the U.S. Patent Office in the matter of withdrawing Patent Application Ser. No. 09/009,294 from issuance. We believe that the Petition under Rule 313 authorized by you was in clear error. There are no new issues of: (1) mistake on the part of the Office; (2) violation of § 1.56 or illegality in the application; or (3) unpatentability of one or more claims, that we have been made aware of. The issue of "cold fusion" raised by you on the telephone to me has already been addressed and dismissed during examination.

Attached is our letter to the Director of Group 1700 which describes in detail the unusual and improper events leading to the last-minute withdrawal from issuance of the patent application, which was due to issue as U.S. Patent No. 6,030,601 on February 29, 2000.

We respectfully request that U.S. Patent Application Serial No. 09/009,294 be allowed to issue as a patent.

Sincerely yours,



Jeffrey S. Melcher
Reg. No. 35,950
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Attachment

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FARKAS & MANELLI PLLC
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The Honorable Todd Dickinson
Commissioner of Patents
United States Patent & Trademark Office
Washington, D.C. 20231

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U.S. Patent Application Ser. No. 09/009,294

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